

## Legalising Cairo: Prospects and Opportunities for Reproductive Rights in Nigeria

Until quite recently, many Nigerians considered reproductive and sexual rights as issues for discussion only by pro-abortion and liberal feminist groups! Considering the typical African traditional values and societal norms generally associated with female sexuality, and in view of the fact that many viewed reproduction and sexual practices as very private issues, it was more or less seen as 'taboo' to advocate reproductive rights, safe abortion and reproductive choice. Traditional practices like female genital mutilation were generally accepted by society, and were not considered harmful or illegal. Also, many of the health aspects of reproduction such as safe motherhood and family planning services, were dealt with principally through the public health sectors of hospitals and management boards, and were not regarded as 'rights' per se. Very few groups such as NGOs, IGOs, and private concerns were involved in advocacy and awareness programmes associated with a gender perspective on reproductive rights and sexuality.

The past decade however has witnessed important socio-cultural and demographic changes in individual and general attitudes. Factors such as rapid urbanisation, population growth, high maternal and mortality rates, advanced technology and the spread of sexually transmitted diseases and HIV/AIDS, have contributed to watering down common beliefs hitherto held in regard to gender specific human rights in general, and reproductive rights in particular. Modern methods of family planning and fertility control are currently widely used in urban areas and there is an increased awareness of reproductive rights as human rights that are basically gender specific. There is also a growing awareness of contraceptive services, counselling and sex education. Many now see the provisions of the Criminal Code, which criminalises abortion except when done to save the life of the woman, as harsh and restrictive. There is also more urgency in addressing the health needs of women beyond their

child-bearing functions, with the result that there is increased advocacy for rights to safe abortion and protection against sexually transmitted diseases by many NGOs. The HIV/AIDS pandemic in Africa has further added to growing concerns related to women's health. Female Genital Mutilation, a common practice prevalent in the entire country, has been recognized as harmful and is presently illegal in many states.

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Of course, the endless debates over the relevance of gender specific rights in Nigeria have continued, despite the indications of states' awareness and protection. In this regard, the national and state governments have taken significant steps towards policies and programmes aimed at protecting the reproductive health of women in particular. These actions remain significant in so far as they recognise the existence of international obligations as well as socio-cultural, religious, economic and political factors that affect the progress and development of women's rights in general. Following the endorsement and ratification of international instruments and covenants, Nigeria is moving towards a new and broader concept of reproductive health and rights. Forums such as the Seventh Women's Health Meeting in Uganda 1993, the International Conference on Population and Development (ICPD) in Cairo 1994, the Social Summit, the Fourth World Women's Conference in Beijing 1995, and subsequent reviews have popularised and contributed to the national discourse on reproductive rights. These international instruments embrace existing principles contained in other declarations such as the Convention on the Elimination of All forms of Discrimination Against Women (1979), the African Charter on Human and People's Right (Banjul, 1981), the Nairobi Forward-

Looking Strategies for the Advancement of Women (Kenya, 1985), and the Vienna World Conference on Human Rights in 1993.

The Beijing Declaration and Platform for Action basically adopted the Cairo Programme of Action and called on Governments to promote education on the human and legal rights of women. This position was further endorsed by the ICPD +5, ICPD+10 and Beijing+10 documents. The crucial question remains the willingness and capacity of the state to follow through to implementation by using the maximum of available legal resources. The main challenge faced in Nigeria is that of realising international standards in the multicultural and tripartite legal system of the state.

### Prospects and opportunities for reproductive rights obligations in Nigeria

Nigeria participated at the ICPD and Beijing Conferences, as well as in many of the follow-up review conferences, including the Beijing+5 in 2000 and the more recent ICPD+10 Review in 2004. It was among the 189 nation-states that approved the historic Platform for Action which emanated from the Beijing Conference. By signing the documents, the state is obliged to incorporate and implement the provisions of international instruments and conventions that protect health, equity and equality. The following are some indicators of capacity and willingness to protect reproductive rights in the state.

### Indicators of capacity and willingness

Key among the indicators of state capacity and willingness to protect women's reproductive rights in Nigeria are the adoption of national policies on reproductive health, ratification of international human rights instruments, legislation by state houses of assembly on reproductive health and gender issues, and constitutional provisions on human rights.

### **(a) National policies on reproductive health**

The National Health Policy became operative in October 1988 and aims at a level of health that 'will enable Nigerians to achieve socially and economically productive lives'. It adopts the primary health concept as the main engine by which the 'goal of health for all Nigerians can be attained'. Some of the provisions include the strengthening of maternal and reproductive health care services. Since 1988 there have been numerous policies and programmes on reproductive health and population issues, including the National Policies on Population and Reproductive Health. These national policies are generally targeted at primary health care centres and services to provide adequate family planning and counselling services in both the public and private sectors. With the adoption of the National Policy on Women in July 2000 and the National Sexual and Reproductive Health Policy and Strategy in 2001, there is an active 'indication of willingness' by the state to mainstream issues of gender into the health and social policies of government. Other laws with gender biases are the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 and the Child Rights Act 2003. There are also national policies on nutrition, HIV/AIDS and economic empowerment, including the National Population Policy for Sustainable Development 1988 (revised in 2003), the National Reproductive Health Policy and Strategic Framework (2001), the National Policy on HIV/AIDS/STIs Control (1997), and the National Policy on the Elimination of Female Genital Mutilation (1998).

The links between sexual and reproductive health and rights and sustainable development agreed on in Cairo were introduced into the Millennium Development Goals project report produced by the United Nations Secretary General in 2000. These links have been reflected in Nigeria's own progress report by NISER in 2003.

The links between sexual and reproductive health and rights and sustainable development agreed on in Cairo have also been introduced in the MDG project report produced by the UN Secretary General in 2005 and in various documents produced by the EU, UNFPA and the World Bank. The eight Millennium Development Goals identify two goals for reproductive

health and oblige governments to invest in these areas. These goals are aimed at reducing by three-quarters the ratio of women dying in child birth and halting and reversing the spread of HIV/AIDS. Unfortunately, the extreme fragmentation of health-related policies in Nigeria has resulted in a lack of integration of closely related health care services, considerable duplication of effort and waste of resources. Little effort has been made to evaluate national projects and programmes for overall impact and effectiveness. There is also a dearth of effective monitoring mechanisms to track funds and resource allocation. This has led to the current limited understanding of the performances and impact of health-related programmes, thereby resulting in a loss of control over programme design and development.

### **(b) Ratification of international instruments**

Nigeria has signed or ratified several international instruments that affirm the right to health with implications for the reproductive health of women. The preamble to CEDAW acknowledges the existence of discrimination against women and makes it clear that the continued existence of gender-based discrimination violates the principles of equality of all persons and respect for human rights and dignity. The African Charter on Human and People's Rights adopted by the 18th Conference of Heads of States and Governments of the Organisation of African Unity in June 1981 in Nairobi, has been domesticated and made part of Nigerian law in Cap. 10 of the Laws of the Federation of Nigeria. Articles 2 and 18(3) of the Charter deal specifically with gender issues and prohibit discrimination on grounds of sex. In particular, the Charter obliges the African Commission to establish a collaborative relationship with CEDAW and eliminate all forms of discrimination against women as stipulated in international declarations and conventions.

The Additional Protocol to the African Charter on Women's Rights was passed in 2003 by the African Union in Maputo, Mozambique. It was a direct response to women's needs and sets out specific standards and measures by which women's rights should be recognised and protected. It also contains provisions for the elimination of harmful traditional prac-

tices. Although Nigeria has signed, she is yet to ratify the Protocol.

CEDAW was ratified in Nigeria in 1985 without reservations and the Optional Protocol to the Convention was signed in September 2000. However, under Section 12 of the 1999 constitution, a treaty cannot have the force of law within Nigeria unless and until the National Assembly adopts it into law. This means that gender specific international human rights instruments, like the CEDAW that have been ratified in Nigeria but not yet domesticated by legislation and incorporated into national law, are not considered as part of the municipal law of the state *lex civiles*. This is despite the fact that CEDAW, the Cairo Programme of Action and the Beijing Platform are points of advancement that Nigeria has undertaken to achieve within specified time periods. It would thus seem that Nigeria embraces the incorporation doctrine, which says that international human rights norms that appear in ratified instruments are not part of domestic laws except by express adoption of the latter. This position has resulted in a weakened impact of international instruments, particularly those relating to women's rights, and seems to deny the remarkable and comprehensive developments of human rights norms.

This author is of the view that the ratification and adoption of international treaties and instruments on human rights and gender issues by the state is indicative of its willingness to comply with international obligations on sexual and reproductive rights. According to Pats Acholonu of the Court of Appeal, 'I believe by being signatory to the convention ... the sovereign government of Nigeria manifested its intention and perhaps willingness to abide by the tenets of the convention...' (Fawehinmi vs Abacha [1990] 9 NWLR [Pt 475], p. 710).

This indication of willingness by the state to promote and protect reproductive rights is also seen from its constitutional capacity to protect other human rights.

### **(c) Constitutional provisions on human rights**

The Nigerian Constitution actively protects international human rights, but appears 'passive' on gender specific human rights obligations. For instance, the Nigerian Constitution does not specifically

protect women against discrimination, but there are general provisions on human rights in Chapter IV, Sections 33–46, with Section 46 stating the procedures for enforcement. It seems, however, that there are quantitative indicators that can allow international human rights obligations to be extended into the realm of gender issues. The Constitution denies the right of the individual to health in the face of ‘overriding’ public interest, but maintains that the ‘State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons’ in Section 17 (3) (d). The Constitution goes on to add in the Fourth Schedule that the functions of the local government council shall include the ‘provision and maintenance of health services’. In Section 17 (3) (h) the Constitution directs its policy towards ‘ensuring that the evolution and promotion of family life is encouraged’.

The rights and empowerment of women are fundamental prerequisites to their reproductive health. This entails ‘promoting increased awareness of women’s rights to resources, health, education and employment’ (Aniekwu, N. I., ‘Examining the Reproductive Health and Rights of Nigerian Women – a Legal Perspective’, *University of Benin Law Journal* Vol. 6, 2, 2001). The above Constitutional provisions put human rights obligations into operation and are further evidence of government’s capacity and willingness to ‘progressively achieve the realization of reproductive rights’ (Ibid, p. 58). However, effective implementation of such rights often depends upon legal and policy frameworks that are not fully expressed in the Constitution. For instance, the provisions on the Fundamental Objectives and Directive Principles of State Policy are non-justiciable and cannot be legally enforced in a court of law. Section 6(6) of the Constitution prevents the courts from looking into whether or not the fundamental objectives and directive principles of state policy have been implemented. Thus, it would appear that the provision for non-discrimination in access to health care is not obligatory for the government. Factors such as the institutional capacity

of the state, and available human, financial and technical resources also determine the extent and implementation of human rights to equality and non-discrimination.

#### **(d) State laws on gender issues**

Several states in the federation have enacted specific laws on women’s health and gender issues. Although there are wide differences between policy and practice, these laws nevertheless indicate state commitments to protecting women’s health and related matters. There are laws prohibiting discrimination in critical areas such as female genital mutilation, widowhood practices and early marriage.

At the federal level, the Marriage Act recognises that a person under the age of 21 years is a minor but allows minors to marry with ‘parental consent’. Section 6.2.7 of the National Policy on Women calls for ‘actions to discourage or forbid withdrawal of girls under 18 from schools for marriage through legal sanctions’. In Bauchi, Kano, Borno and Gombe states, laws have been passed against withdrawing girls from school for the purpose of marriage, while Kebbi and Niger states recently enacted laws prohibiting early marriages. The 1956 Age of Marriage Act, applicable in Eastern Nigeria, which stipulates the minimum age of marriage for both genders at 16 years, is also still in force in the Eastern Region. Ogun and Ebonyi States have incorporated the Child’s Right Act 2003, making 18 years the minimum age of marriage for both genders.

There have also been positive recent developments in the adoption of state laws banning female genital mutilation. This practice has been outlawed in more than twenty-five states including Cross River, Akwa Ibom, Delta, Edo, Osun, Rivers, Bayelsa and Ogun, covering strategic areas of the country where this practice is prevalent and widespread. The High Court laws that provide that any custom or customary law that is ‘contrary to natural justice, equity and good conscience is to be declared repugnant’ and should not be enforced would appear to provide windows of opportunities to challenge many

discriminatory customs relating to women’s health and rights. Edo State has been particularly active in enacting laws that promote and protect women’s health. In 1999, the State House of Assembly passed the Female Circumcision and Genital Mutilation (Prohibition) Law; and brought the attention of the country to the harmful effects of the practice. In addition, the state legislature enacted an edict against international sexual trafficking and prostitution, as well as a law for the monitoring of maternal mortality in Edo State; the Criminal Code (Amendment law) Edo State 2000 and the Edo State Maternal Mortality Monitoring Law (2001) on safe motherhood. The legislature also increased the minimum age of marriage from 16 to 18 years.

In 2001, the state governor signed the Widowhood Bill into law which aims to make provision for the prohibition of inhuman treatment of widows. Although there has not been a dramatic reduction in maternal mortality, unsafe abortion and female genital mutilation, the laws nevertheless provide a legal framework within which activists can implement programmes and advocate for the abolition of practices that endanger women’s health.

#### **Conclusion**

The Beijing and Cairo Conferences bore a remarkable testament to the strength and vitality of women’s movements around the world. The language of equality and human rights, which dominated the Beijing Declaration and Platform for Action and the Cairo Programme of Action, has proved extremely effective in resisting moves by fundamentalist forces to claw back the advances that women have made since the adoption of the UN Charter in 1945. But in Nigeria, despite several policies and laws aimed at reducing reproductive ill-health and promoting women’s rights, international goals are far from being realised. The challenge of improving accountability mechanisms at domestic levels, by political, legal and other means, especially in the areas of reproduction and sexuality, is an ever present issue.